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7 FOODS MARKET CALIFORNIA, INC.,
8 WHOLE FOODS MARKET SERVICES, INC.,
9 and MRS. GOOCH'S NATURAL FOOD
MARKETS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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12 In re: Subpoena of WHOLE FOODS
MARKET CALIFORNIA, INC., WHOLE
13 FOODS MARKET SERVICES, INC., and
MRS. GOOCH'S NATURAL FOOD
14 MARKETS, INC. to FOOD IN-DEPTH INC.

Case No. 5:24-mc-80123

**NOTICE OF MOTION TO COMPEL
FOOD IN-DEPTH TO PRODUCE
DOCUMENTS PURSUANT TO
PETITIONERS' SUBPOENA;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: July 2, 2024
Time: 10:00 A.M.
Place: 280 South 1st Street, Room 2112
San Jose, CA 95113

TABLE OF CONTENTS

	Page
NOTICE OF MOTION	1
MEMORANDUM OF POINTS AND AUTHORITIES	3
I. INTRODUCTION.....	3
II. STATEMENT OF ISSUES TO BE DECIDED.....	4
III. BACKGROUND.....	4
A. Plaintiffs’ Allegations and Case Background.	4
B. Petitioners’ Subpoena to Food In-Depth and the Present Dispute.	5
1. Food In-Depth Obtains Seven Extensions of Time to Produce Documents, Then Fails to Abide by Agreements to Produce Documents.....	6
2. Food In-Depth Fails to Serve Timely Objections and the Parties Dispute Whether Objections are Waived.	6
3. Food In-Depth Seeks a Premature, and Improper, Agreement on Cost-Shifting.	7
4. Food In-Depth Seeks to Limit Production of Electronic Files to Certain Custodians.	7
5. Food In-Depth Refuses to Produce Documents Related to the Food In-Depth Article’s Accuracy.....	8
6. Food In-Depth Refuses to Produce Documents Related to its Corporate Form.	8
7. Food In-Depth Refuses to Stipulate to Have This Matter Heard in The Central District.	9
IV. PETITIONERS’ REQUEST TO TRANSFER TO THE CENTRAL DISTRICT	9
V. DISPUTED ISSUES AND LEGAL ARGUMENT.....	10
A. Legal Standard on Motion to Compel Subpoena Compliance.....	10
B. Food In-Depth Waived All Objections.	10
C. Food In-Depth Is Not Entitled to Cost Shifting.	13
1. Food In-Depth’s Estimated Cost is Inflated and Speculative.....	13

1	2.	Food In-Depth’s Failure to Serve Timely Objections Waived its Ability to Request Cost Shifting.....	14
2	3.	Food In-Depth’s Unique Position as an Interested Third-Party in This Case Weighs Against Cost Shifting.....	15
3	4.	Food In-Depth Rejected Common-Sense Compromises That Would Entirely Negate Its Claimed Costs.	16
4			
5	D.	The Court Should Order a Production From All Custodians of Electronic Discovery.	16
6	E.	Documents Related to the Accuracy of the Food In-Depth Article.	17
7	1.	Request for Production No. 14.....	17
8	2.	Request for Production No. 3.....	20
9	3.	Request for Production No. 5.....	21
10	4.	Request for Production No. 6.....	22
11	5.	Request for Production No. 11.....	23
12			
13	F.	Documents Related to Food In-Depth’s Corporate Form.	24
14	1.	Request for Production No. 51.....	24
15	VI.	CONCLUSION	25

TABLE OF AUTHORITIES
FEDERAL CASES

	Page
<i>Cornell v. Columbus McKinnon Corp.</i> 2015 WL 4747260 (N.D. Cal. Aug. 11, 2015).....	15
<i>Env't World Watch, Inc. v. The Walt Disney Co.</i> 2011 WL 13124125 (C.D. Cal. Nov. 3, 2011).....	17
<i>Legal Voice v. Stormans Inc.</i> 738 F.3d 1178 (9th Cir. 2013)	13
<i>McCoy v. Southwest Airlines Co., Inc.</i> 211 F.R.D. 381 (C.D.Cal.2002)	11
<i>Michael Wilson & Partners, Ltd. v. Sokol Holdings, Inc. (In re Michael Wilson & Partners, Ltd.)</i> 520 Fed. Appx. 736 (10th Cir.2013).....	16
<i>Moon v. SCP Pool Corp.</i> 232 F.R.D. 633 (C.D. Cal. 2005)	10, 11
<i>Schoonmaker v. City of Eureka</i> 2018 WL 5829851 (N.D. Cal. Nov. 7, 2018).....	10
<i>Tutor-Saliba Corp. v. United States</i> 32 Fed.Cl. 609 (1995)	15
<i>United States v. CBS, Inc.</i> 103 F.R.D. 365 (C.D. Cal. 1984)	14
<i>United States v. McGraw-Hill Companies, Inc.</i> 302 F.R.D. 532 (C.D. Cal. 2014)	13, 14, 16

RULES

	Page
Fed. R. Civ. Pro. 26	18
Fed. R. Civ. Proc. 45	10, 11, 14, 16

NOTICE OF MOTION

TO THE HONORABLE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 2, 2024 at 10:00 AM, or as soon thereafter as counsel may be heard in United State District Court for the Northern District of California located at 280 South 1st Street, Room 2112, San Jose, CA 95113, petitioners Whole Foods Market California, Inc., Mrs. Gooch's Natural Food Markets, Inc., and Whole Foods Market Services, Inc. (collectively, "Petitioners"), will and hereby do move to compel third party Food In-Depth Inc. ("Food In-Depth") to provide further production of documents in response to Petitioners' subpoena to produce documents (the "Subpoena") issued in the matter *Sara Safari, et al. v. Whole Foods Market Services, Inc., et al.* pending in the United States District Court for the Central District of California (Case No. 8: 22-cv-01562 JWH-KESx) (the "Related Action").

This motion is made pursuant to Federal Rule of Civil Procedure Rules 26 and 45 and Civil Local Rules 7-1, 7-2, and 37-1 through 37-4 on the grounds that Petitioners are entitled to full production of relevant documents in response to their Subpoena and that Food In-Depth has waived its objections by failing to timely serve them. Accordingly, Petitioners seek an order from this Court: (1) transferring this motion to the Central District to avoid the chance of potentially inconsistent rulings; or, in the alternative, (2) holding that Food In-Depth waived objections to the Subpoena; (3) holding that Food In-Depth is not entitled to premature cost-shifting; (4) ruling that Food In-Depth is required to review the files of each of the eight directors and officers publicly listed on its website to locate and produce responsive documents within its possession, custody or control; (5) holding that documents relating to the accuracy of the Food In-Depth Article are relevant and discoverable under the balancing test set forth in Rule 26(b)(1) and must be produced; and (6) ruling that Food In-Depth must produce documents related to its corporate form.

This motion is made following multiple conferences of counsel pursuant to Civil Local Rule 37-1 that took place from January 17, 2024 through May 9, 2024. This motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities and Declaration of David Adams, all other pleadings, papers, records and documentary materials on file in this

1 action and in the Related Action, and such further evidence and argument as the Court may allow at
2 the hearing on this motion.

3
4 Dated: May 20, 2024

BLAXTER | BLACKMAN LLP

5
6 By:

/s/ David P. Adams

BRIAN R. BLACKMAN

DAVID P. ADAMS

Attorneys for Petitioners WHOLE FOODS
MARKET CALIFORNIA, INC., WHOLE FOODS
MARKET SERVICES, INC., and MRS. GOOCH'S
NATURAL FOOD MARKETS, INC.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioners Whole Foods Market California, Inc. (“WFM CA”), Whole Foods Market Services, Inc. (“WFM Services”), and Mrs. Gooch’s Natural Food Markets, Inc. (“Mrs. Gooch’s”; collectively “Petitioners¹”) move for an order compelling third-party Food In-Depth, Inc. (“Food In-Depth”) to produce further documents responsive to Petitioners’ subpoena for production of documents (the “Subpoena”) issued in the matter of *Sara Safari, et al. v. Whole Foods Market Services, Inc., et al.* pending in the United States District Court for the Central District of California (Case No. 8:22-cv-01562 JWH-KESx) (the “Related Action”).

The Related Action is a false advertising putative class action in which the plaintiffs Peymon Khaghani and Sara Safari (collectively “Plaintiffs”) rely on testing conducted by Food In-Depth to allege that Petitioners falsely promise the beef sold in California Whole Foods Market stores contains no antibiotics. Food In-Depth allegedly conducted its testing at the slaughterhouse of one of Petitioners’ beef suppliers in 2020 and published results from its study in an April 2022 *Science Magazine* article (the “Food In-Depth Article”). Petitioners served a subpoena on Food In-Depth seeking documents and correspondence related to the scope, method and accuracy of the testing conducted and described in the Food In-Depth Article. Food In-Depth has produced a total of 23 pages of documents in response to the Subpoena, while withholding responsive and relevant documents that bear on the article’s scope, method and accuracy. Food In-Depth has done so on the erroneous grounds that these documents are irrelevant, and that it is entitled to have Petitioners pay their estimated cost of review and production before the review is undertaken. Food In-Depth takes this position despite the fact that it has no grounds to withhold documents or request cost shifting because it failed to serve timely objections to Petitioners’ Subpoena. In any event, Food In-Depth’s estimation that it will cost \$74,000 to review 7,400 potentially responsive documents is grossly inflated. Finally, Food In-Depth refused to stipulate to have this matter heard in the Central District despite the fact that having the present motion heard in this Courts risks the

¹ Petitioners are sometimes referred to as “Defendants” herein when sources are quoted, due to the context of this Petition.

possibility of inconsistent rulings on key issues or relevance, and Food In-Depth faces no burden attending proceedings in the Central District remotely.

II. STATEMENT OF ISSUES TO BE DECIDED

Petitioners seek an order from this Court: (1) transferring this motion to the Central District to avoid the chance of potentially inconsistent rulings; or, in the alternative, (2) holding that Food In-Depth waived all objections to the Subpoena; (3) holding that Food In-Depth is not entitled to premature cost-shifting; (4) ruling that Food In-Depth is required to review the files of each of the eight directors and officers publicly listed on its website to locate and produce responsive documents within its possession, custody or control; (5) holding that documents relating to the accuracy of the Food In-Depth Article are relevant and discoverable under the balancing test set forth in Rule 26(b)(1) and must be produced; and (6) ruling that Food In-Depth must produce documents related to its corporate form.

III. BACKGROUND

A. **Plaintiffs' Allegations and Case Background.**

Plaintiffs in the Related Action allege that Petitioners falsely advertise the beef products sold at Whole Foods Market stores in California using the slogan “No Antibiotics Ever.” *See* Declaration of David Adams (“Adams Decl.”), Ex. 1 [Second Amended Complaint – ECF No. 108], ¶2. Plaintiffs rely on two sources of product testing as factual support for their allegations of deception. First, Plaintiffs allege that an animal rights organization (and now-dismissed former Plaintiff in this action) Farm Forward, conducted testing showing that a single product purchased from a Whole Foods Market store in California may have tested positive for antibiotics. Second, Plaintiffs rely more heavily on testing conducted by a third-party, respondent Food In-Depth, that allegedly shows that cattle destined for sale at Whole Foods Market tested positive for antibiotics:

In 2020, Food In Depth (“FoodID”), an independent, third-party, testing organization, conducted an extensive antibiotics testing program of “raised without antibiotics” cattle at a Slaughterhouse One [*sic*], a facility that supplied Whole Foods’ stores in both Northern and Southern California during the class period. FoodID’s evidence of antibiotics use in Whole Foods’ Certifier’s beef reveals Whole Foods’ “No Antibiotics, Ever” promise for what it is: a marketing scheme designed to increase profits at the expense of

conscientious consumers. The study found that over the seven-month testing period, approximately 26% of Whole Foods' Certifier's cattle came from a lot where at least one animal tested positive, and 22% of Whole Foods' Certifier's cattle came from a lot where two animals tested positive for antibiotics. Whole Foods' certifying entity and certification program, Global Animal Partnership (GAP), was developed by and is used almost exclusively by Whole Foods. FoodID's testing led scientists to suggest that there was *[sic] systemic problem* in Whole Foods' certifying entity's beef supply chain. The results of FoodID's testing indicate that at least one out of every five head of cattle at Slaughterhouse One that were in Whole Foods' certification program had been raised with antibiotics. FoodID notified Whole Foods. Both Plaintiffs purchased Beef Products from Whole Foods entities that sourced beef from this tainted supply chain.

Adams Decl., Ex. 1, ¶3; *accord id.* at ¶¶58-62.

Based on these allegations, Plaintiffs seek actual damages and restitution in the amount of an alleged price premium paid by the putative class for, and/or Petitioners' profit deriving from, all beef purchases at Petitioners' stores in California during the statutory period. *See* Adams Decl., Ex. 1, ¶¶14, 22, 103, 115, 122, 135, 143, 153, and Prayer for Relief at B. Importantly, Plaintiffs' claim for punitive damages is also tethered to their allegations regarding Food In-Depth's conduct because Plaintiffs argue that Petitioners were aware of the alleged presence of antibiotics in their supply chain because Food In-Depth shared the results of its antibiotic testing with Petitioners in 2020. *See* Adams Decl., Ex. 1, ¶¶2, 67-68, 136-145, and Prayer for Relief at B.

B. Petitioners' Subpoena to Food In-Depth and the Present Dispute.

Given Plaintiffs' significant reliance on Food In-Depth's alleged testing, Petitioners drafted the Subpoena to Food In-Depth seeking documents related to Food In-Depth's testing. Adams Decl., ¶3, Ex. 2 [Subpoena]. On January 17, 2024, Food In-Depth's counsel agreed on a telephone call to accept service of the Subpoena. Adams Decl., ¶4, Ex. 3 [Meet-and-Confer Email Correspondence] at 37. Over the next four months, the parties embarked on an extensive-meet and-confer covering several disputes addressed in the present motion.²

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² The summary below condenses the meet-and-confer efforts for brevity's sake. A more detailed recitation of the timeline and parties' specific communications is contained in the supporting Declaration of David Adams.

1 **1. Food In-Depth Obtains Seven Extensions of Time to Produce Documents,**
 2 **Then Fails to Abide by Agreements to Produce Documents.**

3 During the parties' extensive meet-and-confer conversations, Petitioners granted no less
 4 than *seven* extensions of time for Food In-Depth to produce documents. Adams Decl., ¶5, Ex. 3 at
 5 9-37. Several of these extensions were conditioned on Food In-Depth producing documents for
 6 which no dispute existed prior to the production deadline as the parties continued to meet-and-
 7 confer. Adams Decl., ¶5, Ex. 3 at 9, 30-31. Despite these agreements, Food In-Depth produced
 8 only 23 pages of documents in response to the Subpoena on February 21, 2024, and has otherwise
 9 failed and refused to abide by its agreement to produce further documents. Adams Decl., ¶5, Ex. 3
 10 at 30.

11 **2. Food In-Depth Fails to Serve Timely Objections and the Parties Dispute**
 12 **Whether Objections are Waived.**

13 Food In-Depth failed to serve objections fourteen days after service of the Subpoena, and
 14 when the parties met and conferred on February 13, 2024, Petitioners informed Food In-Depth that
 15 its failure to serve timely objections waived any objections. *See* Adams Decl., ¶6, Ex. 3 at 33, 36.
 16 While Food In-Depth argued that its deadline to serve objections was implicitly extended when
 17 Petitioners initially agreed to extend the Subpoena's production date (*Id.* at ¶7, Ex. 3 at 32, 34),
 18 Petitioners explained that was not the case. *Id.* at ¶8, Ex. 3 at 28.

19 As the parties continued to meet-and-confer, Food In-Depth *still* delayed in serving
 20 objections to the Subpoena, even after Petitioners explained on February 13, 2024, that Food In-
 21 Depth's failure to serve timely objections prejudiced Petitioners and hampered meet-and-confer
 22 efforts. *See* Adams Decl., ¶9, Ex. 3 at 28. Food In-Depth did not serve its objections to the
 23 Subpoena until March 1, 2024. *Id.*, Ex. 4 [Food In-Depth's Objections]. Importantly, at no point
 24 in the parties' meet-and-confer did Petitioners express any position other than a good-faith
 25 willingness to negotiate a reasonable scope of production in response to the Subpoena despite
 26 Food In-Depth's waiver of objections. *See* Adams Decl., ¶10, Ex. 3 at 33, 36.

27 ///

1 **3. Food In-Depth Seeks a Premature, and Improper, Agreement on Cost-**
 2 **Shifting.**

3 On February 13, 2024, Food In-Depth requested that Petitioners agree to pay Food In-
 4 Depth for the costs of review before Food In-Depth undertook the review. *See* Adams Decl., ¶11,
 5 Ex. 3 at 34. In response, Petitioners inquired why Food In-Depth could not simply produce all
 6 potentially responsive documents to Petitioners to avoid the cost of review. *Id.*, ¶11, Ex. 3 at 21-
 7 22.

8 On March 21, 2024, Food In-Depth replied and rejected Petitioners' proposal to avoid the
 9 cost of review and production by producing all potentially responsive documents. *See* Adams
 10 Decl., ¶12, Ex. 3 at 14. Nonetheless, on March 26, 2024, Petitioners agreed to pay the reasonable
 11 cost of review after Food In-Depth completed the review and provided information supporting the
 12 review's cost. *Id.*, ¶12, Ex. 3 at 12. Food In-Depth replied that it would not undertake production
 13 without Petitioners first agreeing to not challenge the reasonableness of an agreed-upon amount of
 14 costs (i.e., attorneys' fees) with the understanding that the amount of costs could decrease should
 15 the review take less time than originally estimated. *Id.*, ¶12, Ex. 3 at 9. Petitioners stated that
 16 agreeing to a minimum payment amount that was subject to reduction was logically contradictory
 17 and meaningless, and Petitioners' position was unchanged. *Ibid.* On April 30, 2024, Food In-
 18 Depth informed Petitioners that it identified 7,400 potentially relevant documents and unless it
 19 could eliminate potentially duplicative documents from this review set, it would cost roughly
 20 \$74,000 dollars to review these documents. *Id.* at ¶13.

21 **4. Food In-Depth Seeks to Limit Production of Electronic Files to Certain**
 22 **Custodians.**

23 Petitioners contend that Food In-Depth should search the electronic files of each officer,
 24 director, and employee publicly listed on its website: Kevin Lo, Bill Niman, Joel Martin, Scott
 25 Levitan, Scott Robbin, Dan Denny, Chuck Templeton, and Megan Hanley. Adams Decl., ¶14, Ex.
 26 3 at 8; Ex 5 [Food In-Depth's Website]. Food In-Depth consented to run searches for responsive
 27 documents within the files of all these custodians except for Dan Denny, Chuck Templeton, and
 28

1 Megan Hanley, claiming without providing any supporting facts that “files of Dan Denny, Chuck
2 Templeton, and Megan Hanley are either not reasonably accessible or otherwise not in FoodID’s
3 possession, custody, or control.” Adams Decl., ¶14, Ex. 3 at 2.

4 **5. Food In-Depth Refuses to Produce Documents Related to the Food In-Depth**
5 **Article’s Accuracy.**

6 Several RFPs in the Subpoena request documents regarding scope, method and accuracy of
7 the testing and Food In-Depth Article. *See* Adams Decl., ¶15, Ex. 2, RFP Nos. 3, 5, 6, 11, and 14.
8 On the parties’ February 13, 2024 meet-and-confer call, Food In-Depth stated that these RFPs
9 were overbroad because communications related to the logistics of publishing the Food In-Depth
10 Article were irrelevant. *Id.* at ¶16, Ex. 3, p. 34. After a modest but incomplete production of
11 documents on February 21, 2024, Petitioners offered to limit the scope of these RFPs “to exclude
12 any communications related to the logistics of publishing the article” but made it clear that
13 documents and communications bearing on the accuracy of the article must still be produced. *Id.*
14 at ¶17, Ex. 3, p. 28.

15 On March 6, 2024, Food In-Depth shifted its position, and argued that documents related
16 to the Food In-Depth Article’s scope, method and accuracy were confidential and burdensome to
17 produce. *See* Adams Decl., ¶18, Ex. 3 at 23. Petitioners replied and explained that “Documents
18 regarding the peer review process, however, are relevant because they provide insight into the
19 validity of FoodID’s testing methods.” *Ibid.* Food In-Depth nonetheless refused to produce
20 documents, and insisted the Court resolve the issue. *Id.*, Ex. 3 at 2.

21 **6. Food In-Depth Refuses to Produce Documents Related to its Corporate Form.**

22 On March 6, 2024, a month and a half after the Subpoena was served, Food In-Depth
23 informed Petitioners for the first time that it would not produce documents sufficient to understand
24 its corporate form in response to RFP No. 51. Adams Decl., ¶19, Ex. 3 at 24. Petitioners
25 explained that these documents were necessary because Petitioners have been unable to determine
26 Food In-Depth’s corporate form, place of business, or agent for service of process and would need
27 this information going forward in this case to ensure it could serve a trial Subpoena. *Id.* Food In-
28

1 Depth then agreed to produce documents filed with the Delaware Secretary of State regarding its
 2 corporate form. *Id.*, Ex. 3 at 8. Food In-Depth then reneged on its agreement, refused to produce
 3 further documents, and instead offered to discuss accepting service of the present Subpoena only
 4 (blithely ignoring the fact the Subpoena had already been served). *Id.*, Ex. 3 at 2.

5 **7. Food In-Depth Refuses to Stipulate to Have This Matter Heard in The Central**
 6 **District.**

7 Finally, while motions to compel production of documents arising from subpoenas are
 8 required to be brought in the district where compliance is required, Petitioners asked Food In-
 9 Depth to stipulate to have this motion heard in the Central District where this matter is pending so
 10 that the parties could avoid the expense of initiating a new action and having to get a new court
 11 educated on this case. *See* Adams Decl., ¶20, Ex. 3 at 4. Food In-Depth refused and provided no
 12 grounds for its refusal other than “its residence in the Northern District.” *Id.*, Ex. 3 at 1.

13 **IV. PETITIONERS’ REQUEST TO TRANSFER TO THE CENTRAL DISTRICT**

14 At the outset, Petitioners request that this Court transfer the present motion to the Central
 15 District where the Related Action is being heard. When the court where compliance is required
 16 did not issue the subpoena, it may transfer a subpoena-related motion to the issuing court if the
 17 nonparty consents or the court finds “exceptional circumstances.” Fed. R. Civ. Proc. 45(f). “The
 18 prime concern should be avoiding burdens on local nonparties subject to subpoenas and it should
 19 not be assumed that the issuing court is in a superior position to resolve subpoena related
 20 motions.” *Id.* at Adv. Comm. Note to 2013. However, transfer may be appropriate “in order to
 21 avoid disrupting the issuing court’s management of the underlying litigation, as when that court
 22 has already ruled on issues presented by the motion or the same issues are likely to arise in
 23 discovery in many districts.” *Ibid.* Courts may ease this burden by allowing the subpoenaed
 24 third-party to attend the hearing remotely. *Ibid.*

25 Here, Petitioners have been litigating the Related Action in the Central District for almost
 26 two years and that Court is intimately familiar with the issues presented in this case after having
 27 ruled on a motion to dismiss, a motion for reconsideration on the motion to dismiss, and seven
 28

discovery-related motions. Adams Decl., ¶21. Any ruling from this Court regarding the relevance of documents bearing on the validity of Plaintiffs’ testing, will potentially disrupt the Central District’s management of this case by ruling on an issue that is likely to arise again in the litigation. Importantly, Petitioners will stipulate to hear this motion remotely in the Central District to avoid imposing any burdensome travel on Food In-Depth’s attorneys.

V. DISPUTED ISSUES AND LEGAL ARGUMENT

A. **Legal Standard on Motion to Compel Subpoena Compliance.**

“At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.” Fed. R. Civ. Proc. 45(d)(B)(i).

Should this Court decline to transfer the present motion to the Central District, Petitioners request that the Court grant their motion to compel on the following issues.

B. **Food In-Depth Waived All Objections.**

At the outset, the Court should grant Petitioners’ motion because Food In-Depth waived all objections to Petitioners’ Subpoena by failing to timely object. Federal Rule of Civil Procedure 45(d)(2)(B) states:

A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises--or to producing electronically stored information in the form or forms requested. **The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served.**

Fed. R. Civ. P. § 45(d)(2)(B) (emphasis added). “A nonparty’s failure to timely make objections to a Rule 45 subpoena duces tecum generally requires the court to find that any objections have been waived.” *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 636 (C.D. Cal. 2005); *accord Schoonmaker v. City of Eureka*, No. 17-CV-06749-VC (RMI), 2018 WL 5829851, at *1 (N.D. Cal. Nov. 7, 2018).

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Petitioners served Food In-Depth with the Subpoena on January 17, 2024. *See* Adams Decl., ¶4, Ex. 3 at 37. Any objections to the Subpoena or its individual document requests were due fourteen days later, i.e., January 31, 2024. Fed. R. Civ. P. § 45(d)(2)(B). Food In-Depth did not serve any objections by the deadline. *See*, Adams Decl., ¶¶6-9, Ex. 4. When confronted with this fact, Food In-Depth claimed its deadline to serve objections was implicitly extended when Petitioners initially agreed to extend the Subpoena’s production date to February 21, 2024. *Id.*, ¶7, Ex. 3 at 32, 34. Petitioners, however, had not agreed to extend Food In-Depth’s objection deadline. *Id.*, ¶8, Ex. 3 at 28. The deadline to object is calculated based on the date the Subpoena is *served*, not on the date of compliance. Fed. R. Civ. P. § 45(d)(2)(B). Thus, Petitioners’ agreement to extend the production deadline did not affect Food In-Depth’s deadline to serve its objections. *Ibid.* Regardless, even under Food In-Depth’s own interpretation of Rule 45, Food In-Depth further waived its objections by not serving them until March 1, 2024 – over a week after its February 21, 2024 production date, and over two weeks after Petitioners initially informed them of their waiver. *Id.*

Food In-Depth will likely argue that “[i]n unusual circumstances and for good cause, ... the failure to act timely will not bar consideration of objections [to a Rule 45 subpoena].” [Citations]. Courts have found unusual circumstances where, for instance, the subpoena is overbroad on its face and exceeds the bounds of fair discovery and the subpoenaed witness is a non-party acting in good faith.” *Moon*, 232 F.R.D. at 636, quoting *McCoy v. Southwest Airlines Co., Inc.*, 211 F.R.D. 381, 385 (C.D.Cal.2002). “Unusual circumstances” do not exist in this case for two reasons: (1) Food In-Depth has not acted in good faith to produce documents in this matter and (2) the Subpoena, as discussed Sections V.D-V.F below, is not overly broad and does not exceed the bounds of fair discovery.

Food In-Depth’s failure to act in good faith in response to the Subpoena is evident in several respects. First, Food In-Depth waited over a month to serve objections after they were due. Adams Decl. at Ex. 4. This significantly impaired the parties’ meet-and-confer efforts, as Petitioners pointed out to Food In-Depth, because it prevented Petitioners from ascertaining the

1 scope of the parties' disputes regarding production, delayed resolution of those disputes, and
2 prejudicing Petitioners' ability to effectively gather evidence to mount their defense in the Related
3 Action.

4 Second, despite receiving *seven* extensions of time to produce documents, Food In-Depth
5 ultimately produced only 23 pages. *Id.*, ¶5. This is the company whose "testing" is the
6 cornerstone of Plaintiffs' factual basis for bring the Related Action. Food In-Depth also withheld
7 responsive documents in the custody of its Executive Chairman Kevin Lo (an agreed custodian in
8 this matter), despite Petitioners conditioning several extensions of Food In-Depth's time to
9 produce documents on its agreement to make rolling productions from Mr. Lo's files. *Id.*, ¶5, Ex.
10 3 at 9.

11 Finally, in contrast to Food In-Depth's conduct, Petitioners have worked in good faith to
12 find an agreed scope of production to reduce any burden on Food In-Depth. Petitioners even
13 offered to pay Food In-Depth's reasonable costs of production upon proof thereof, despite the fact
14 that Food In-Depth waived all such rights by failing to timely object to the Subpoena. Adams
15 Decl., ¶12, Ex. 3 at 12.

16 Ultimately, Food In-Depth's failure to serve timely objections, and bad-faith failure to
17 comply with its discovery obligations waived its right to dispute *any* of the issues in this motion.
18 Food In-Depth's failure was not a mere technicality. Its objections were not served a day late.
19 They were served a month late, and weeks after the issue was brought to Food In-Depth's
20 attention and the parties had initiated a meet-and-confer process. Petitioners were prejudiced as a
21 result. The clear text of Rule 45 shows that the deadline to serve objections was set by the date of
22 service, not the production date (which Petitioners extended numerous times as a courtesy). Thus,
23 this Court should grant Petitioners' motion in its entirety because Food In-Depth has waived all
24 objections to the Subpoena.

25 ///

26 ///

27 ///

C. Food In-Depth Is Not Entitled to Cost Shifting.

The Ninth Circuit has held “that [Federal Rule of Civil Procedure] 45(d)(2)(B)(ii) requires the district court to shift a non-party’s costs of compliance with a subpoena, if those costs are significant.” *Legal Voice v. Stormans Inc.*, 738 F.3d 1178, 1184 (9th Cir. 2013).

Food In-Depth contends that Petitioners must pay for its cost of review, including its attorneys’ fees, in advance and without first determining the actual reasonable cost of review. This position fails for multiple reasons: (1) Food In-Depth’s estimated cost of review is grossly inflated, and speculative; (2) Food In-Depth’s failure to serve timely objections waived its ability to request cost shifting; (3) Food In-Depth’s unique position as a third-party in the Related Action weighs against cost shifting here; and (4) Food In-Depth has rejected common-sense compromises that would entirely negate these costs. While Petitioners initially agreed to pay the reasonable cost of Food In-Depth’s review and production, in light of the forgoing factors Petitioners now seek a ruling from the Court denying cost shifting altogether.

1. Food In-Depth’s Estimated Cost is Inflated and Speculative.

Food In-Depth demands Petitioners pay a fixed minimum amount of \$74,000.00 to review and produce 7,400 potentially responsive documents from five of eight custodians, but then offers to adjust this cost down if the review takes less time than anticipated. Food In-Depth’s proposal is logically unsound, and its estimated cost inflated.

First, as explained by Petitioners during the parties’ meet-and-confer, Food In-Depth’s proposal for Petitioners to agree to pay a minimum amount of Food In-Depth’s review cost that is subject to downward adjustment makes no sense. A minimum that is subject to downward adjustment is, definitionally, not a minimum. An agreement to pay such a “minimum” would be illusory and unenforceable.

Regardless, fighting about the reasonableness of estimated costs is a purely speculative exercise. Once the review is undertaken, the parties and Court (if necessary), will be in a position to actually judge the reasonableness of the cost of the review. *United States v. McGraw-Hill Companies, Inc.*, 302 F.R.D. 532, 537 (C.D. Cal. 2014) (denying third-party’s request for

1 subpoena cost shifting until “after documents have been produced and a meaningful record has
 2 been established, [at which point] the Court will review motions for cost-shifting from the non-
 3 parties.”). Requiring Petitioners to pay any amount of costs before the review is undertaken is
 4 thus improper and could potentially result in a windfall for Food In-Depth. *Ibid.*

5 Second, Food In-Depth’s proposed \$74,000 in attorneys’ fees is grossly inflated and
 6 disproportionate to the likely actual cost of review for several reasons. To begin with, courts have
 7 held that the cost of retaining outside counsel to review documents for privilege and
 8 confidentiality are not recoverable costs for third parties responding to discovery. *United States v.*
 9 *CBS, Inc.*, 103 F.R.D. 365, 374 (C.D. Cal. 1984) (“The Nonparty Witnesses will not be allowed to
 10 recover the costs incurred in retaining outside counsel.”). Even if this Court were to consider
 11 attorneys’ fees a legitimate cost, \$74,000 is in stark contrast to the costs Petitioners were quoted
 12 for a recent document review undertaken in the Related Action in which a discovery vendor
 13 estimated the cost to review 86,303 documents at \$127,258. Adams Decl., ¶13. That works out to
 14 \$1.47 per document. By contrast, Food-In-Depth’s estimated cost to review a mere 7,400
 15 documents works out to \$10 per document.

16 **2. Food In-Depth’s Failure to Serve Timely Objections Waived its Ability to**
 17 **Request Cost Shifting.**

18 Under Federal Rule of Civil Procedure 45 – the rule on which the Ninth Circuit’s holding
 19 in *Legal Voice* that “significant costs” must be shifted from subpoenaed third-parties is based –
 20 cost shifting is available only “[i]f an objection is made.” Fed. R. Civ. P. 45(d)(2)(B) (emphasis
 21 added). Thus, under the plain language of Rule 45, the Court’s power to issue an order requiring
 22 cost shifting is only invoked upon service of an effective objection made under Rule 45(d)(2)(B).
 23 As explained in Section V.B of this brief, Food In-Depth failed to serve timely objections to the
 24 Subpoena. Accordingly, Food In-Depth is not entitled to cost shifting.

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1 **3. Food In-Depth’s Unique Position as an Interested Third-Party in This Case**
 2 **Weighs Against Cost Shifting.**

3 In determining whether a third-party incurs significant expense in complying with a
 4 subpoena, “Courts also consider whether the nonparty has an interest in the outcome of the
 5 underlying case.” *Cornell v. Columbus McKinnon Corp.*, No. 13-cv-02188-SI, 2015 WL
 6 4747260, at *3, 5 (N.D. Cal. Aug. 11, 2015). “Rule 45’s cost-shifting provision “was not intended
 7 as a mechanism for entities which stand to benefit from certain litigation outcomes to evade
 8 discovery costs arising from their involvement in the underlying acts that gave rise to the lawsuit.”
 9 *Id.* at *5, citing *Tutor-Saliba Corp. v. United States*, 32 Fed.Cl. 609, 610, nt. 5 (1995) (noting that
 10 the nonparty at issue, unlike many nonparties, was “substantially involved in the underlying
 11 transaction and could have anticipated that [its involvement might] reasonably spawn some
 12 litigation, and discovery”).

13 Here, not only did publication of the Food In-Depth Article directly set in motion the chain
 14 of events leading to the Related Action, but Food In-Depth’s testing and article are the pivotal
 15 pieces of evidence used by Plaintiffs to support their allegations that Petitioners’ “No Antibiotics
 16 Ever” statements are false or misleading. A comparison of the two bodies of testing allegations in
 17 Plaintiffs’ operative complaint shows Plaintiffs rely far more on Food In-Depth’s testing (seven
 18 months of testing involving 699 head of cattle purporting to show 15% of Petitioners’ cattle came
 19 from lots testing positive for antibiotics) than they do on the testing conducted by Farm Forward
 20 (finding one single product purchased from a California Whole Foods Market allegedly contained
 21 antibiotics). Compare Adams Decl., Ex. 1, ¶¶58-62; with *Id.* at ¶¶63-66. Simply put, Food In-
 22 Depth generated the key allegations in Plaintiffs’ Complaint in the Related Action, and did so
 23 freely and in pursuit of its own interests and goals. The Related Action followed as a result, and
 24 Food In-Depth cannot retain the benefits and acclaim arising from its freely taken and self-
 25 interested actions, while discounting the foreseeable consequences.

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1 **4. Food In-Depth Rejected Common-Sense Compromises That Would Entirely**
 2 **Negate Its Claimed Costs.**

3 “[O]ne thing is certain: an unreasonably incurred expense is not an expense “resulting from
 4 compliance [with a subpoena].” *McGraw-Hill Companies, Inc.*, 302 F.R.D. at 536, citing to
 5 *Michael Wilson & Partners, Ltd. v. Sokol Holdings, Inc. (In re Michael Wilson & Partners, Ltd.)*,
 6 520 Fed. Appx. 736, 741 (10th Cir.2013). “In other words, Rule 45 does not cut a blank check to
 7 non-parties—unnecessary or unduly expensive services do not “result from compliance” and,
 8 therefore, do not count as “expenses.” *Id.* at 536. Specifically, attorneys’ fees that are
 9 unnecessary because they are “for the non-party’s sole benefit and peace of mind” are not
 10 reasonable and recoverable. *Ibid.*

11 During the parties’ meet and confer on March 6, 2024, Petitioners suggested that Food In-
 12 Depth could entirely avoid incurring any costs associated with reviewing potentially responsive
 13 documents if it simply turned over all potentially responsive documents to Petitioners. Adams
 14 Decl., ¶11, Ex. 3 at 21-22. Unlike party discovery, where potentially sensitive privileged and
 15 confidential information could damage a party’s interests by falling into the hands of a litigation
 16 adversary, here these considerations do not apply to Food In-Depth, a third party. Further, any
 17 confidentiality concerns Food In-Depth may have can be addressed through the stipulated
 18 protective order entered in the Related Action. Adams Decl., ¶22, Ex. 7 [Stipulated Protective
 19 Order]. Food In-Depth, however, rejected this proposal and did not articulate any specific
 20 argument against such disclosure in response to Petitioners’ proposition. *Id.* at ¶12, Ex. 3, p. 14.
 21 Accordingly, any costs incurred by Food In-Depth associated with this review are not necessary,
 22 purely for Food In-Depth’s sole benefit and peace of mind, and therefore not reasonable.
 23 Petitioners should not be required to pay for any such costs.

24 **D. The Court Should Order a Production From All Custodians of Electronic Discovery.**

25 Food In-Depth is obligated to produce documents within its possession, custody, or
 26 control. Fed. R. Civ. P. 45(a)(1)(A)(iii). Courts have held that the electronic files of officers and
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 28

1 directors of a company are discoverable under this standard. *Env't World Watch, Inc. v. The Walt*
 2 *Disney Co.*, No. CV094045DMGPLAX, 2011 WL 13124125, at *4 (C.D. Cal. Nov. 3, 2011).

3 Petitioners contend that Food In-Depth should search the electronic files of each officer,
 4 directors, and employee publicly listed on its website: Kevin Lo, Bill Niman, Joel Martin, Scott
 5 Levitan, Scott Robbin, Dan Denny, Chuck Templeton, and Megan Hanley. Adams Decl., ¶14, Ex.
 6 5 [Food In-Depth's Website]. Food In-Depth has consented to run searches for responsive
 7 documents within the files of all these custodians except for Food In-Depth's Co-Founder and
 8 Chief Scientist Dan Denny, and board members Chuck Templeton, and Megan Hanley. *Id.* at ¶14.

9 As Petitioners explained during the parties' meet-and-confer, however, the fact that Dan
 10 Denny, Chuck Templeton, and Megan Hanley are not Food In-Depth employees is immaterial.
 11 Petitioners have provided prima facie evidence that these individuals are affiliated with Food In-
 12 Depth by virtue of their listed positions on Food In-Depth's website, and Food In-Depth has
 13 provided no evidence to the contrary.

14 **E. Documents Related to the Accuracy of the Food In-Depth Article.**

15 Petitioners contend that they are entitled to obtain a full and complete production of
 16 documents related to the accuracy of the Food In-Depth Article responsive to RFP Nos. 3, 5, 6, 11,
 17 and 14. Per Northern District Local Rule 37-2, Petitioners set forth each contested request, and
 18 Food In-Depth's objection below followed by Petitioners' arguments in favor of production.

19 **1. Request for Production No. 14.**

20 **a. Petitioners' Requests and Food In-Depth's Objections.**

21 **REQUEST NO. 14:** All DOCUMENTS and COMMUNICATIONS RELATING TO any
 22 peer review of YOUR ANTIBIOTICS TESTING on and/or testing results from CREEKSTONE
 23 CATTLE.

24 **RESPONSE TO REQUEST NO. 14:** FoodID objects to this Request as it relies on the
 25 burdensome and overly broad definitions of YOUR and CREEKSTONE CATTLE; FoodID
 26 interprets these terms as described above. FoodID objects to this Request on the grounds that it is
 27 overbroad, unduly burdensome, and not proportional to the needs of the case. FoodID objects to
 28

1 this Request to the extent it seeks information not relevant to the claims or defenses of any party,
 2 not reasonably calculated to lead to the discovery of admissible evidence, or otherwise not within
 3 the scope of relevant discovery. FoodID objects to this Request to the extent that it calls for the
 4 production of documents or things that are protected by the attorney-client privilege, the attorney
 5 work product doctrine, or any similar privilege or immunity. FoodID objects to the extent the
 6 Request seeks information that violates her and/or third parties' right to privacy. FoodID objects to
 7 this Request to the extent it seeks documents that have already been produced in this action.

8 Subject to and without waiving the foregoing objections, FoodID responds as follows:
 9 FoodID directs Defendants to the documents with the bates stamp bearing NIMAN009-018, which
 10 contain responsive documents containing supplementary materials attached to the APRIL 2022
 11 SCIENCE MAGAZINE ARTICLE and describing the materials and methods for the testing
 12 conducted by FoodID related to the APRIL 2022 SCIENCE MAGAZINE ARTICLE.

13 **b. The Court Should Order Food In-Depth to Produce All Responsive**
 14 **Documents.**

15 While Food In-Depth's response above directs Petitioners to some documents nominally
 16 responsive to this request, the parties' meet-and-confer makes clear that Food In-Depth withheld a
 17 substantial number of responsive documents on the grounds that information regarding the peer
 18 review process, and correspondence with the Food In-Depth Article's authors regarding the article,
 19 is allegedly confidential and burdensome to produce. Adams Decl., ¶18, Ex. 3, p. 23. Federal
 20 Rule of Civil Procedure 26 states:

21 Parties may obtain discovery regarding any nonprivileged matter
 22 that is relevant to any party's claim or defense and proportional to
 23 the needs of the case, considering the importance of the issues at
 24 stake in the action, the amount in controversy, the parties' relative
 access to relevant information, the parties' resources, the importance
 of the discovery in resolving the issues, and whether the burden or
 expense of the proposed discovery outweighs its likely benefit.

25 Fed. R. Civ. Pro. § 26(b)(1).

26 Information regarding the validity of Food In-Depth's testing, and the peer review process
 27 conducted with regards to the Food In-Depth Article, is crucial to Petitioners' defense in the
 28

1 Related Action and discoverable under the balancing factors set forth in Rule 26(b)(1). First, as
2 explained above, Plaintiffs’ allegations of falsity and deception rest almost entirely on the validity
3 of this testing and their discussion in the Food In-Depth Article. Adams Decl., Ex. 1, ¶¶3, 58-62.
4 Thus, information bearing on the validity of this testing – such as how this testing was vetted
5 during the scientific peer review process – is pivotal to Petitioners’ defense.

6 Second, this discovery is proportional considering the importance of the issues at stake in
7 the Related Action and the amount in controversy. Whole Foods Market has consistently
8 promised customers for over 40 years that its beef contains “No Antibiotics, Ever.” Adams Decl.,
9 Ex. 1, ¶¶39-52. Petitioners take this promise seriously and take pride in their reputation as a
10 trusted retailer of quality antibiotic-free beef products. Plaintiffs’ allegations of duplicity are
11 therefore serious, and Petitioners are entitled to obtain relevant evidence bearing on their truth so
12 that they can effectively defend their brand reputation, and defend against the significant damages
13 Plaintiffs allege they are entitled to in the Related Action. Adams Decl., Ex. 1, ¶¶14, 22, 103, 115,
14 122, 135, 143, 153, and Prayer for Relief at B.

15 Third, Petitioners have no access to the information requested regarding peer review other
16 than through their subpoena power. This factor weighs in favor of disclosure.

17 Fourth, any concerns Food In-Depth may have regarding the burden of production will be
18 addressed by the Court’s ruling on cost shifting, and the confidentiality of responsive documents
19 may be preserved by designating responsive documents as confidential under the stipulated
20 protective order entered in the Related Action. Adams Decl., ¶22, Ex. 7.

21 In short, there are no grounds for withholding responsive documents regarding the peer
22 review process, and this Court should issue an order compelling Food In-Depth to produce
23 responsive documents. To deny Petitioners discovery into this matter would be to allow any
24 plaintiff to simply coordinate with a third-party to generate allegations supporting a complaint,
25 then allow the plaintiff to walk into trial with their theory of the case untested by discovery or
26 cross-examination after the defendant is denied discovery from the third-party. This would be an
27 untenable result running contrary to the principles of fair discovery in our judicial system.
28

1 **2. Request for Production No. 3.**

2 **a. Petitioners' Requests and Food In-Depth's Objections.**

3 **REQUEST NO. 3:** All COMMUNICATIONS between YOU and SCIENCE
4 MAGAZINE RELATING TO the APRIL 2022 SCIENCE MAGAZINE ARTICLE.

5 **RESPONSE TO REQUEST NO. 3:** FoodID objects to this Request as it relies on the
6 burdensome and overly broad definitions of YOU and SCIENCE MAGAZINE; FoodID interprets
7 these terms as described above. FoodID objects to this Request to the extent it seeks information
8 not relevant to the claims or defenses of any party, not reasonably calculated to lead to the
9 discovery of admissible evidence, or otherwise not within the scope of relevant discovery,
10 particularly as FoodID had extensive communications with SCIENCE MAGAZINE relating to the
11 APRIL 2022 SCIENCE MAGAZINE ARTICLE concerning topics ancillary to the substance of
12 the APRIL 2022 SCIENCE MAGAZINE ARTICLE. FoodID objects to this Request to the extent
13 that it calls for the production of documents or things that are protected by the attorney-client
14 privilege, the attorney work product doctrine, or any similar privilege or immunity. FoodID
15 objects that this Request is overbroad, unduly burdensome, and not proportional to the needs of
16 the case to the extent that it seeks information that is proprietary trade secret or confidential or
17 competitively sensitive and is not relevant to this litigation. FoodID objects to this Request to the
18 extent that it seeks confidential and/or trade secret information of a third-party, and which FoodID
19 is obligated to maintain as confidential information.

20 **b. The Court Should Order Food In-Depth to Produce All Responsive**
21 **Documents.**

22 Food In-Depth refuses to locate and produce documents responsive to RFP No. 3,
23 contending that many communications between itself and *Science Magazine* would not be
24 substantive or relevant, and those that might be substantive involve the peer review process and
25 are confidential. Adams Decl., ¶18, Ex. 3, p. 23. Petitioners offered the following to limit the
26 scope of the request to exclude non-substantive communications regarding logistics. *Ibid.* Food
27 In-Depth declined Petitioners' offer and refused to produce any responsive communications.
28

As explained in the previous sections, communications between Food In-Depth and *Science Magazine* bearing on the validity of Food In-Depth's testing are highly relevant to the Related Action and are therefore discoverable under the balancing test set forth in Rule 26(b)(1). Petitioners are entitled to discover information that bears on the credibility of the key evidence Plaintiffs use to support their allegations of falsity in the false advertising case. Petitioners stand by their reasonable offer to limit the scope of this RFP to exclude non-substantive communications about formatting, scheduling calls, costs etc. Food In-Depth, however, must produce communications that bear on the substance of the article.

Food In-Depth's burden and confidentially objections lack merit. Neither objection weighs against production because the validity of the burden will be addressed by this Court's ruling on cost shifting, and confidentiality concerns can be addressed by the stipulated protective order entered in the Related Action. Adams Decl., ¶22, Ex. 7.

3. Request for Production No. 5.

a. Petitioners' Requests and Food In-Depth's Objections.

REQUEST NO. 5: All COMMUNICATIONS between YOU and Lance B. Price and/or Laura Rogers or their agents RELATED TO the APRIL 2022 SCIENCE MAGAZINE ARTICLE.

RESPONSE TO REQUEST NO. 5: FoodID objects to this Request as it relies on the burdensome and overly broad definition of YOU; FoodID interprets this terms as described above. FoodID objects to this Request on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case because it seeks "All COMMUNICATIONS between YOU and Lance B. Price and/or Laura Rogers or their agents RELATED TO the APRIL 2022 SCIENCE MAGAZINE ARTICLE," which would include an extensive number of documents, particularly as Lance B. Price and Laura Rogers are coauthors on the APRIL 2022 SCIENCE MAGAZINE ARTICLE and thus exchanged many documents with FoodID regarding topics ancillary to the substance of the APRIL 2022 SCIENCE MAGAZINE ARTICLE. FoodID objects to this Request to the extent it seeks information not relevant to the claims or defenses of any party, not reasonably calculated to lead to the discovery of admissible evidence, or otherwise not

1 within the scope of relevant discovery. FoodID objects to the extent the Request seeks information
 2 that violates third parties' right to privacy. FoodID objects that this Request is overbroad, unduly
 3 burdensome, and not proportional to the needs of the case to the extent that it seeks information
 4 that is proprietary trade secret or confidential or competitively sensitive and is not relevant to this
 5 litigation.

6 **b. The Court Should Order Food In-Depth to Produce All Responsive**
 7 **Documents.**

8 The parties' positions with respect to RFP No. 5 are identical to those discussed with
 9 regard to RFP No. 3 above. Adams Decl. Ex. 3, ¶18, p. 23. Petitioners contend that
 10 communications between Food In-Depth and Lance B. Price and/or Laura Rogers, the co-authors
 11 of the Food In-Depth Article, are relevant and discoverable because they bear on the validity of
 12 the article's findings. These findings are the key evidence used by Plaintiffs to support their
 13 allegations in the Related Action, and Petitioners are entitled to this discovery. Food In-Depth
 14 must produce responsive documents under the balancing factors set forth in Rule 26(b)(1). Any
 15 concerns regarding burden will be addressed by this Court's ruling on cost shifting, and
 16 confidentiality concerns can be addressed by the stipulated protective order.

17 **4. Request for Production No. 6.**

18 **a. Petitioners' Requests and Food In-Depth's Objections.**

19 **REQUEST NO. 6:** All YOUR internal COMMUNICATIONS RELATING TO the
 20 APRIL 2022 SCIENCE MAGAZINE ARTICLE.

21 **RESPONSE TO REQUEST NO. 6:** FoodID objects to this Request as it relies on the
 22 burdensome and overly broad definition of YOUR; FoodID interprets this terms as described
 23 above. FoodID objects to this Request to the extent it seeks information not relevant to the claims
 24 or defenses of any party, not reasonably calculated to lead to the discovery of admissible evidence,
 25 or otherwise not within the scope of relevant discovery. FoodID objects to this Request to the
 26 extent that it calls for the production of documents or things that are protected by the attorney-
 27 client privilege, the attorney work product doctrine, or any similar privilege or immunity. FoodID
 28

1 objects to this Request to the extent it seeks documents that have already been produced in this
 2 action, documents that have been requested from parties to this action, or documents that can
 3 easily or more properly be obtained from parties to this action. FoodID objects that this Request is
 4 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent that it
 5 seeks information that is proprietary trade secret or confidential or competitively sensitive and is
 6 not relevant to this litigation.

7 **b. The Court Should Order Food In-Depth to Produce All Responsive**
 8 **Documents.**

9 Petitioners' position with respect to RFP No. 6 is identical to that discussed with regards to
 10 RFP Nos. 3, and 5 above.

11 **5. Request for Production No. 11.**

12 **a. Petitioners' Requests and Food In-Depth's Objections.**

13 **REQUEST NO. 11:** All COMMUNICATIONS between YOU and Lance B. Price and/or
 14 Laura Rogers or their agents RELATING TO YOUR ANTIBIOTICS TESTING of
 15 CREEKSTONE CATTLE.

16 **RESPONSE TO REQUEST NO. 11:** FoodID objects to this Request as it relies on the
 17 burdensome and overly broad definitions of YOU and CREEKSTONE CATTLE; FoodID
 18 interprets these terms as described above. FoodID objects to this Request on the grounds that it is
 19 overbroad, unduly burdensome, and not proportional to the needs of the case because it seeks "All
 20 COMMUNICATIONS between YOU and Lance B. Price and/or Laura Rogers or their agents
 21 RELATING TO YOUR ANTIBIOTICS TESTING of CREEKSTONE CATTLE," which would
 22 include an extensive number of documents, particularly as Lance B. Price and Laura Rogers are
 23 coauthors on the APRIL 2022 SCIENCE MAGAZINE ARTICLE and thus exchanged many
 24 documents with FoodID regarding topics ancillary to the substance of the APRIL 2022 SCIENCE
 25 MAGAZINE ARTICLE. FoodID objects to this Request to the extent it seeks information not
 26 relevant to the claims or defenses of any party, not reasonably calculated to lead to the discovery
 27 of admissible evidence, or otherwise not within the scope of relevant discovery. FoodID objects
 28

1 that this Request is overbroad, unduly burdensome, and not proportional to the needs of the case to
 2 the extent that it seeks information that is proprietary trade secret or confidential or competitively
 3 sensitive and is not relevant to this litigation.

4 **b. The Court Should Order Food In-Depth to Produce All Responsive**
 5 **Documents.**

6 Petitioners' position with respect to RFP No. 11 is identical to that discussed with regards
 7 to RFP Nos. 3, 5, and 6 above.

8 **F. Documents Related to Food In-Depth's Corporate Form.**

9 Petitioners contend that they are entitled to obtain a full and complete production of
 10 documents related to Food In-Depth's corporate form responsive to RFP No. 51. Per Northern
 11 District Local Rule 37-2, Petitioners set forth the contested request, and Food In-Depth's objection
 12 below followed by Petitioners' argument in favor of production.

13 **1. Request for Production No. 51.**

14 **a. Petitioners' Requests and Food In-Depth's Objections.**

15 **REQUEST NO. 51:** DOCUMENTS sufficient to understand YOUR corporate form and
 16 mission.

17 **RESPONSE TO REQUEST NO. 51:** FoodID objects to this Request as it relies on the
 18 burdensome and overly broad definition of YOUR; FoodID interprets this term as described above.
 19 FoodID objects to this Request to the extent it seeks information not relevant to the claims or defenses
 20 of any party, not reasonably calculated to lead to the discovery of admissible evidence, or otherwise
 21 not within the scope of relevant discovery. FoodID objects to this Request to the extent that it calls for
 22 the production of documents or things that are protected by the attorney-client privilege, the attorney
 23 work product doctrine, or any similar privilege or immunity.

24 Subject to and without waiving the foregoing objections, FoodID responds as follows: FoodID
 25 directs Defendants to FoodID's website, available at <https://www.foodid.com/>, which contains
 26 responsive documents regarding its mission.

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